



COMMONWEALTH of VIRGINIA

Molly Joseph Ward
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
Blue Ridge Regional Office
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David K. Paylor
Director

Robert J. Weld
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO CSX TRANSPORTATION, INC.

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and CSX Transportation, Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
3. "Containment and cleanup" means abatement, containment, removal, and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
4. "CSX" means CSX Transportation, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. CSX is a "person" within the meaning of Va. Code § 62.1-44.3.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

6. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. “Discharge” means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
8. “Location” means the area adjacent to and on the shoreline of the Jackson River at the CSX Covington Railyard in Covington, Virginia where the oil discharge occurred.
9. “NOAV” means a Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. “Oil” means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code § 62.1-44.34:14.
12. “Operator” means any person in control of, or having responsibility for, the daily operation of the UST system as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
13. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
14. “Owner” means any person who owns an UST system used for storage, use, or dispensing of regulated substances as defined in Va. Code § 62.1-44.34:8 and 9 VAC 25-580-10.
15. “Person” means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.
16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 9 (Va. Code §§ 62.1-44.34:8 through 62.1-44.34:9) of the State Water Control Law addresses Storage Tanks.
17. “Va. Code” means the Code of Virginia (1950), as amended.
18. “VAC” means the Virginia Administrative Code.
19. “Vehicle” means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

SECTION C: Findings of Fact and Conclusions of Law

1. CSX is a person and operator of a vehicle, a tanker railcar, with transports Oil to customers.
2. On October 18, 2016, DEQ received notification of a discharge of Oil, in the form of diesel fuel, near the CSX Railyard in Covington, Virginia.
3. The notification indicated that on October 18, 2016, a CSX locomotive derailed in the CSX Railyard in Covington, Virginia. The fuel tank of this locomotive was breached and leaked as a consequence of the derailment, allowing 1,700 gallons of Oil to discharged into the ground and into the Jackson River, a state water, causing a film or sheen upon or discoloration of the surface of the water. DEQ assigned IR No. 2017-W-1217 to this incident.
4. Virginia Department of Emergency Management staff were called to the Location. Based on observations by emergency response personnel and CSX reports, it appears that 425 gallons of the released oil was recovered from the river by CSX emergency response contractors.
5. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that violate applicable water quality standards or cause a film or sheen upon or discoloration of the surface of the water.
6. On November 21, 2016, the Department issued Notice of Violation No. 16-11-BRRO-003 to CSX for a discharge of oil to the land and state waters.
7. On February 9, 2017, CSX submitted an Initial Abatement Report (“IAB”). In the IAB, CSX explained that

No adverse impacts to the terrestrial and aquatic biota were observed in the Jackson River following the diesel fuel release. The diesel fuel that did enter the Jackson River likely had a negligible effect on the waterway due to recovery and containment efforts. No physical or long-term damage was done to the stormwater system, and the release will no longer affect the stormwater system as residual diesel fuel is addressed through [continuing] remedial activities.
8. Based on the results of the DEQ on-site response and documentation submitted by CSX, the Board concludes that CSX has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C(2) through C(7) above.
9. In order for CSX to complete its return to compliance, DEQ staff and representatives of CSX have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders CSX, and CSX agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$2,125.00 within 45 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

CSX shall include its Federal Employer Identification Number (FEIN) (54-6000720) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, CSX shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of CSX for good cause shown by CSX, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 16-11-BRRO-003 dated November 21, 2016. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, CSX admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact, and conclusions of law in this Order.
4. CSX consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. CSX declares that it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by CSX to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. CSX shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. CSX shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on his part. CSX shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the CSX intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

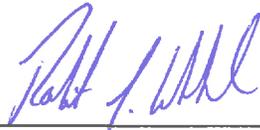
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and CSX.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after CSX has completed all of the requirements of the Order;
- b. CSX petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to CSX.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CSX from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by CSX and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of CSX certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind CSX to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of CSX.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, CSX voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of November, 2017.



Robert J. Weld, Regional Director
Department of Environmental Quality

Consent Order

CSX Transportation, Inc. – Jackson River Oil Discharge; IR No. 2017-W-1217; BR16-1116

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CSX Transportation, Inc. voluntarily agrees to the issuance of this Order.

Date: 09/13/17 By: Raghunath S. Chatriathi

Commonwealth/State of Florida
City/County of Jacksonville, Duval

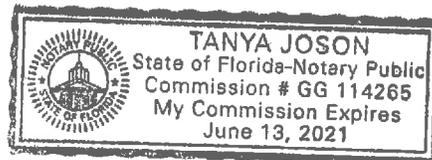
The foregoing document was signed and acknowledged before me this 13 day of September, by Raghunath S Chatriathi, who is Director Environmental Systems of CSX, Transportation Inc., on behalf of the corporation.

Tanya Joson
Notary Public

GG 114265
Registration No.

My commission expires: June 13, 2021

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

CSX shall:

1. **Monitoring**: CSX shall continue monthly monitoring and product recovery at the Location until sheen attributable to the release is no longer observed in the sump network or until product recovery is deemed by DEQ to be impracticable.
2. **Reporting**: Commencing with a report due by October 15, 2017, CSX shall submit quarterly monitoring reports (due on the 15th of October, January, April, and July) that describe all monitoring and product recovery efforts.
3. **Notification**: Within 14 days of completion, CSX shall submit written notification to the Department of the completion of all action items required by this Order. If completion of an item does not occur in accordance with this schedule, CSX shall submit written notification within three (3) business days after the due date advising the Department as to when it plans to complete the item, but in no instance shall the delay in completion extend beyond 60 days from the original due date.

DEQ Contact

Unless otherwise specified in this Order, CSX shall submit all requirements of Appendix A of this Order to:

Robert Steele
VA DEQ –Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019

Phone: (540) 562-6777
Fax: (540) 562-6725
Email: Robert.Steele@deq.virginia.gov